

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,) NO. 55955-9-I
)
Respondent,)
)
v.) UNPUBLISHED OPINION
)
LUIS GUZMAN-GUZMAN,)
)
Appellant.) FILED: SEPTEMBER 25, 2006

PER CURIAM – After a jury trial, appellant Luis Guzman was convicted on all five charged counts relating to his involvement in a cocaine-dealing conspiracy. A cocaine dealer, Sergio Lopez, admitted on the stand that he mentioned a supplier other than Guzman during his sales to an undercover officer. Because the admission by Lopez was already in evidence, the court properly excluded the undercover officer’s repetition of Lopez’s statements as cumulative.

Guzman’s actions came under scrutiny by local police after they connected him with Lopez. The police observed Lopez making a sale of cocaine

to Officer Buchanan, an undercover agent. They watched Lopez leave in a white truck, and later identified Guzman as the registered owner of the truck. Six days after the initial sale, Officer Buchanan arranged another cocaine purchase from Lopez. Officer Buchanan exchanged \$1,200 in cash for one ounce of cocaine. Police again saw Guzman's white truck transport Lopez to and from the sale. Roughly 10 minutes after this sale, police pulled Guzman over. They arrested both Guzman and Lopez.

At the scene of the arrest, police searched Guzman and found \$700 of the buy money on him. In preparation for the buy-bust operation, police had recorded the serial numbers from the cash. These numbers matched the money on Guzman. Police searched Guzman's truck and found a compartment near the gear shift lever of the truck containing additional cocaine.

Guzman's companion, Lopez, pled guilty to his involvement in the cocaine operation, and agreed to testify on behalf of the State concerning Guzman's role in the sales to the undercover officer. Lopez testified that Guzman was his cocaine supplier for both sales, and that he saw Guzman retrieve the cocaine for the second sale from the compartment near the gear shift lever.

During cross-examination, Lopez admitted that he told Officer Buchanan he could obtain additional cocaine from a friend who was visiting from California. Officer Buchanan testified later in the trial, and confirmed on cross-examination that during the sales, Lopez had made references to a drug supplier in

California. When Guzman sought to have Officer Buchanan repeat the statements that Lopez made about a California source, the court precluded Guzman from making further inquiry since Lopez had already admitted making the statements.

Guzman took the stand in his own defense, and testified that he did not hide cocaine underneath the gears in his truck. He also claimed he did not know that anything was in the space under the gears. Guzman stated that his only involvement in the matter was providing rides to his friend Lopez, and that Lopez's real supplier was in California.

The jury convicted Guzman; he appeals.

Guzman contends that the trial court erred by sustaining the State's objections to his questions of the undercover officer. He contends the statements Lopez made to Officer Buchanan about a different drug supplier in California were relevant to prove that Guzman was not the supplier, and that the testimony should have been admitted under an exception to the hearsay rule.

As can be seen from the record, the court sustained objections to the defense cross-examination of Officer Buchanan about what Lopez said because the information sought was cumulative of Lopez's own testimony about what he said.

[Defense Counsel]: And he made a number of statements about going to California or having a friend who was going to California to get drugs; right?

[Buchanan]: He did make reference to a connection that he had from

California.

[Defense Counsel]: And he made reference to that person even being able to get meth for you; right?

[Buchanan]: I believe so.

[Defense Counsel]: And he made reference to the fact that that person was going to California to do that?

[Prosecutor]: Objection, Your Honor. All of these items were admitted by Mr. Lopez when he was on the witness stand.

The Court: Sustained.

[Defense Counsel]: As long as the prosecutor agrees that that was the conversation.

[Prosecutor]: Objection regarding the commentary.

The Court: Sustained, should be stricken.

Guzman's cross-examination of the undercover officer returned to the subject of suppliers in California two more times.

[Defense Counsel]: And again he discussed his supplier being in California?

[Prosecutor]: Objection, Your Honor, acknowledged.

The Court: Sustained.

...

[Defense Counsel]: So, prior to the deal, you had already gotten an indication from him that he had a supplier in California who was getting more drugs. And when you got there and talked to him a little further, he again reiterated his supplier in California; right?

[Buchanan]: I remember hearing that at least once. He may have mentioned California twice. I don't know exactly.

[Defense Counsel]: Do you recall him talking a lot about his uncle and his uncle having a ranch there and that sort of thing?

[Prosecutor]: Objection.

The Court: Just a second. Sustained.

On appeal, Guzman invokes an exception to the hearsay rule for statements of a co-conspirator, ER 801(d)(2)(v). However, the State did not seek to exclude the testimony on hearsay grounds. Instead, the State objected

to the cumulative nature of the testimony, and the court sustained the objections on that basis. The trial court may exclude relevant evidence if its probative value is outweighed by “considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” ER 403. Because the State did not seek to exclude the testimony on hearsay grounds, we will not review the claim of evidentiary error based on ER 801(d)(2)(v).

To preserve an error on the exclusion of evidence, a party should make an offer of proof in support of the admissibility of the evidence. The offer should indicate any prejudice that will occur if the evidence is excluded. State v. Vargas, 25 Wn. App. 809, 817, 610 P.2d 1 (1980). A party objecting to the exclusion of evidence needs to aid the trial court by explaining why the evidence is admissible over the objection of his opponent. Blood v. Allied Stores Corp., 62 Wn.2d 187, 193, 381 P.2d 742 (1963).

Below, Guzman failed to identify a proper basis for allowing Officer Buchanan to testify further about what Lopez said, and did not indicate the prejudice that would occur upon exclusion. Guzman said his purpose in having the undercover officer repeat statements that were already in evidence went to impeachment. See ER 801(d)(1)(i). But Guzman was not able to identify specific inconsistent statements. Because Guzman failed to provide a persuasive argument in support of offering cumulative evidence, the trial court properly limited this line of inquiry to statements to the undercover officer that

Lopez could not recall or denied making.

Next, Guzman claims the error is constitutional, and therefore can be raised on appeal despite his failure to properly preserve the issue. An appellate court may refuse to review a claim of error if the party claiming error failed to raise the issue with the trial court. RAP 2.5(a). But a party may raise a claim of error for the first time with an appellate court if the error affected a constitutional right. RAP 2.5(a)(3).

Guzman contends that the trial court violated his constitutional right to present a defense. The Sixth Amendment of the United States Constitution and Const. art. I, § 22 grant a criminal defendant the right to present testimony in his own defense. State v. Hudlow, 99 Wn.2d 1, 14, 659 P.2d 514 (1983). Still, a defendant has no constitutional right to have irrelevant evidence admitted in his defense. Hudlow, 99 Wn.2d at 15.

Guzman asserts the evidence was relevant to prove that another suspect supplied the cocaine to Lopez. Guzman did not explain this theory below, and has not persuasively explained it on appeal.

A court may not wholly preclude introduction of evidence that may mitigate the defendant's guilt by tending to prove that another suspect committed a crime. State v. Maupin, 128 Wn.2d 918, 928, 913 P.2d 808 (1996). In Maupin, the trial court erred by excluding eyewitness testimony that placed an abducted child with other persons at a time after the defendant was supposed to

have kidnapped and murdered the child. The court recognized that evidence inducing speculation about another's opportunity to commit the crime should be excluded, but found that Maupin had laid a sufficient foundation to introduce evidence of another suspect.

In contrast, Guzman's offer of proof was inadequate to establish the nexus necessary to gain admission of "other suspect" evidence. The undercover officer admitted that Lopez mentioned a supplier in California, but explained that the statements referred to future deliveries.

The State acknowledged that Lopez admitted having potential sources in California. Guzman asserts that the court prevented the jury from hearing testimony about Lopez identifying other potential sources, but the record does not bear this out. Without some connection between the proffered testimony and the crime, the evidence is irrelevant. Because Guzman has not shown the excluded testimony to be relevant, we reject his argument that the trial court's ruling infringed upon his constitutional right to present a defense. Guzman has failed to show a constitutional error that would justify review of the claimed error despite lack of a proper objection at trial.

Guzman has not provided either factual or legal support for his remaining claim that the court violated his rights under the confrontation clause. We decline to rule on a constitutional argument that has not been sufficiently developed or briefed. State v. Davis, 53 Wn. App. 502, 506, 768 P.2d 499

(1989).

Affirmed.

FOR THE COURT:

Becker, J.

Dwyer, J.

Appelwick, C.J.